THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.2351 of 2002

Dated:25.11.2005

Between:

K.S. Harinath, S/o. Late Venkat Reddy,

R/o Visakhapatnam.

..... PETITIONER

AND

Visakhapatnam Municipal Corporation,

Rep. by its Commissioner, Visakhapatnam.

.....RESPONDENT

THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.2351 of 2002

ORDER:

The petitioner claims to be the owner of land admeasuring 556 square yards in Block No.49, Division No.17 of Waltair, Ganjipeta. So as to construct ground+three floors, he approached the respondent-Corporation seeking building permission, which was sanctioned on 12.01.2001. He commenced construction, and he received a notice, dated 30.08.2001, under Section 452 of the Hyderabad Municipal Corporations Act, 1955 (for short 'the Act'). The petitioner submitted explanation on 03.09.2001. After considering the explanation, the respondent, by impugned order dated 24.01.2002, rejected the explanation, and directed the petitioner to remove the unauthorized construction made in deviation of the sanctioned plan within a period of one week. As he did not remove the unauthorized constructions, on 30.01.2002, the respondent-Corporation issued notice under Section 636 of the Act informing

that the unauthorized construction would be removed by the Corporation, if the petitioner fails to do so within 24 hours. This is assailed in the writ petition.

In the counter affidavit filed by the respondent opposing the writ petition, it is stated that the petitioner made construction in deviation of the sanctioned plan by either increasing or decreasing the setback areas and constructed more than the permissible floor area ratio. It is also stated that as per the approved plan, the petitioner has to make construction on the coverage area of 30.82%, whereas he made construction on 31% of the area and also converted individual residential house into group housing and apartment flats. Therefore, after following due process of law and issuing notice under Section 452 of the Act, the notice under Section 636 of the Act was issued.

The learned Counsel for the petitioner submits that one Nambari Atcheyamma claimed an extent of 120 Square yards in the petitioner's property, and she gave a complaint to the Corporation, based on which, the Corporation initiated action under the provisions of Section 452 of the Act. **Per contra,** learned Standing Counsel for the respondent Corporation submits that the claim made by Nambari Atcheyamma for 120 Square yards in Door No.12-1-30 situated in T.S.No.1052/3 of Waltair Ward is nothing to do with the action initiated against the petitioner for making construction in deviation of the sanctioned plan.

As per the provisions of the Act, whenever a person makes unauthorized construction in deviation of the sanctioned plan, a notice is required to be given calling for explanation. After obtaining explanation, the Commissioner has to consider the explanation and pass necessary orders. If the deviations are found to be in gross violation of the bylaws and not in accordance with the approved plan, an order shall be issued directing the person to remove the unauthorized construction. If it is not done, notice under Section 636 of the Act is given giving 24 hours time. In the scheme of the Act, this procedure was introduced to prevent unauthorized constructions by greedy persons and greedy builders. In this case as seen from the counter affidavit, the petitioner, though obtained permission for construction of residential quarter, constructed apartment block for the purpose of group housing, which itself is a gross violation. Therefore, it is not possible to accept the submission of the learned Counsel for the petitioner that the deviations are minor deviations. Secondly, the procedure adopted by the respondent-Corporation is unexceptionable. As rightly pointed out by the learned Standing Counsel, in the considered opinion of this Court, the claim made by the third party had least influence in the respondent-Corporation taking action against the petitioner for making construction in deviation of the sanctioned plan, especially when the violations are gross and are *ex facie* illegal.

In the result, this Writ Petition fails and is accordingly dismissed. No costs.

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(V.V.S.RAO, J)

25.11.2005

vs